

Author: Maldonado Analyst: Jeff Garnier Bill Number: AB 2237Related Bills: See Prior Analysis Telephone: 845-5322 Amended Date: April 27, 2000Attorney: Patrick Kusiak Sponsor:**SUBJECT:** Environmental Building Expenses Credit

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

X AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 24, 2000 STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would allow a credit equal to 5% of environmental building costs paid or incurred to construct, repair, maintain, rehabilitate or improve a 25,000 square foot or larger commercial or multifamily residential structure. The aggregate amount of credits allowed could not exceed \$25 million in any one calendar year. If credit claims exceed \$25 million in a year, the credit would be allocated by the Tax Credit Allocation Committee (TCAC).

SUMMARY OF AMENDMENTS

The April 27, 2000, amendments added the \$25 million aggregate annual limitation and the TCAC allocation requirement. The amendments also added a sunset date for the credit of December 1, 2007. Additionally, the amendments would require certification by the Environmental Protection Agency (EPA), not EPA and Energy Commission, and would no longer require environmentally sound fixtures to be scientifically demonstrable to be less harmful to the environment; instead, fixtures would be required to be certified by the EPA to be environmentally sound or energy efficient. The amendments also would require the buildings to be located in California. Finally, the amendments limit the carryover period of any unused credit to eight years.

EFFECTIVE DATE

As a tax levy, this bill would become effective immediately upon enactment and would apply to taxable and income years beginning on or after January 1, 2001, and before January 1, 2007.

Board Position:

<u> </u> S	<u> </u> NA	<u> </u> NP
<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> </u> X PENDING

Legislative Director

Date

Johnnie Lou Rosas

6/5/00

SPECIFIC FINDINGS

Except for the items discussed in this analysis, the remainder of the department's February 24, 2000, analysis still applies. Policy concerns that were not resolved by the April 27, 2000, amendments are restated below.

This bill would no longer require an environmentally sound fixture to be scientifically demonstrable to be less harmful to the environment than other fixtures commonly used for the same purpose. The fixture would have to be certified by the EPA to be environmentally sound or energy efficient, as defined.

This bill would require the EPA to complete the certification of fixtures as being environmentally sound or energy efficient by July 1, 2001, and annually update the list of certifications by each July 1 thereafter. The EPA may delegate the certification process to any of its member boards or departments, the California Energy Commission, the Department of Water Resources, or the State Department of Health Services.

This bill would allow up to \$25 million in credits for environmental building expenses in any one calendar year. In the event that more than \$25 million in valid credits are claimed in any one year, the TCAC would allocate up to \$25 million in credits based on the TCAC's determination of which claimant's environmental building costs would result in the greatest proportionate increases in environmental soundness and energy efficiency. The TCAC would be required to promulgate regulations governing the implementation of the TCAC's duties regarding the allocation of this credit.

Policy Considerations *

This bill may allow taxpayers in certain circumstances to claim multiple special tax credits for the same item of expense (e.g., Manufacturers' Investment, Enterprise Zone and Targeted Tax Area Credits).

In the case of buildings being used in a trade or business, this bill would not require the basis of the building or the amount of the current expense to be reduced by the amount of the credit.

Conflicting tax policies come into play whenever a credit is provided for an expense item for which preferential treatment is already allowed in the form of an expense deduction or depreciation deduction. This new credit would provide a double benefit for these expense items. On the other hand, making an adjustment to reduce the basis or expense in order to eliminate the double benefit creates a state and federal difference, which is contrary to the state's general conformity policy. In the case of a one-time expense deduction, the reduction of that expense would not create an ongoing difference. However, if the expenditure must be capitalized, then an ongoing difference would be created.

While the credit would be capped at an aggregate of \$25 million per year, this bill does not otherwise limit the annual credit amount that would be allowed to any one taxpayer.

This bill does not require the environmental building costs incurred by the taxpayer to be for new equipment and does not state a minimum amount of time the taxpayer must use the equipment to avoid recapture of the allowed credit. Without one of these requirements, more than one taxpayer potentially could claim the credit on the same piece of equipment.

Implementation Considerations

This bill would require the TCAC to allocate the credit only if the aggregate amount of credits claimed by all taxpayers exceeds \$25 million. TCAC's involvement would arise, if at all, only after returns are already filed. Generally, allocation of credits is done prior to filing tax returns.

To determine whether TCAC allocation would be required, the department would have to hold all returns claiming the environmental building costs credit. The department would be required to pay interest on any refund not mailed to a taxpayer within 45 days of the return's filing date. Additionally, under present law, a taxpayer could file an amended return, up to four years after the original due date of the return, claiming the credit.

The definition of "material" is not specified.

Department staff is available to assist in resolving the above or any other concern.

Technical Considerations

The bill would provide for a credit for "environmental building expenses" paid or incurred by the taxpayer. The bill does not define "environmental building expenses." It does define "environmental building costs." Amendments 1 and 3 are provided to correct this error.

In the subdivision specifying the requirement that the EPA issue a written report to the Legislature, there is a typographical error in both the PITL and the B&CTL sections. Amendments 2 and 4 are provided to correct this error.

FISCAL IMPACT

Departmental Costs

Once the implementation considerations are resolved, this bill would not significantly increase the department's costs.

Tax Revenue Estimate

The revenue losses under the B&CT and PIT laws are estimated to be as follows:

Revenue Impact of AB 2237		
For Taxable Year Beginning After 1/1/2001		
Assumed Enactment After 6/30/2000		
Fiscal Years		
(In Millions)		
2000-01	2001-02	2002-03
-\$3	-\$25	-\$25

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this proposal.

Revenue Discussion:

The impact of this bill would depend upon the number of taxpayers incurring qualified environmental building costs and the average credit applied against tax liabilities.

This estimate is based on actual departmental data regarding previous credits (i.e., commercial solar energy credit and the energy conservation credit). The estimate has been grown to the out-years by applying the consumer price index. Adjustments were made to account for differences between this credit and previous credits (i.e., percentage of cost for the credit calculation, universe of potential taxpayers, etc.). The first fiscal year impact primarily represents reductions in estimated tax payments made by corporations.

BOARD POSITION

Pending.

Analyst	Jeff Garnier
Telephone #	845-5322
Attorney	Patrick Kusiak

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2237
As Amended April 27, 2000

AMENDMENT 1

On page 3, line 39, strikeout "expenses" and insert:
costs

AMENDMENT 2

On page 6, line 25, strikeout "and" and insert:
than

AMENDMENT 3

On page 6, line 38, strikeout "expenses" and insert:
costs

AMENDMENT 4

On page 9, line 20, strikeout "and" and insert:
than